JUSTICE SECTOR REFORMS IN MACEDONIA, MONTENEGRO AND SERBIA

COMPARATIVE ANALYSIS OF MEASURES
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EXECUTIVE SUMMARY

This paper presents a regional comparative analysis of the justice sector reform measures in the Macedonia, Montenegro and Serbia, along with concrete recommendations for further steps in the reform processes, and positive examples that could be shared and replicated across the countries. The aim of this comparative analysis is to provide an overview of the main reform measures envisaged in the justice sector reform strategies in the three countries. The analysis compares the reform measures and approaches in four strategic areas: efficiency; quality; independence and impartiality; and accountability. The comparative analysis contains an overview about the extent to which the national strategies or draft strategies point out that a specific challenge in the aforementioned areas exists and should be addressed. Furthermore, it focuses on the reform measures and activities, i.e. whether the strategic documents envisage concrete measures for tackling the noted issues, and whether these measures are adequate, relevant and justified. Where applicable, the analysis also offers an overview of the achieved results and tangible progress in meeting the envisaged goals of the reforms.

Macedonia, Montenegro and Serbia are facing serious justice sector reforms as part of their efforts to accede to the European Union. Montenegro and Serbia have already begun negotiations under the chapter 23 – Judiciary and fundamental rights and have developed respective action plans. Largely following these plans, both Montenegro and Serbia have adopted Justice Sector reform strategies covering the periods 2014–2018 and 2013–2018 respectively. Macedonia is in the process of developing a Justice Sector Reform Strategy covering the period up to 2022, but the EU is making the start of its negotiations conditional to a list of urgent reform priorities, which also refer to: depoliticizing the appointment and promotion of judges and prosecutors, establishing an adequate performance management system as a basis for career decisions, revising the disciplinary action system to remove risks to judicial independence, ensuring the professionalism of the Judicial council and stimulating its role to protect judicial independence.

Having in mind the challenges faced by Macedonia, Montenegro and Serbia in developing and implementing meaningful and comprehensive reforms in the justice sectors, the authors formulated the following key recommendations concerning the three countries, divided into five functional areas:

COORDINATION AND IMPLEMENTATION OF THE JUSTICE SECTOR REFORMS

- In order to enable easy verification of the claims made in the reports on the implementation of the justice sector reform strategies, they should provide hyperlinks to documents that verify the achievements (e.g. a link to a legislative act, if the measure refers to adoption of new legislation).
- Justice sector stakeholders need to ensure comprehensive, inclusive and meaningful consultations of civil society and other non-state actors. The results should be published in a form suitable for the public and discussed with key stakeholders. Regular public and expert debates on the content of the draft annual and semi-annual reports on the implementation
of the judicial reform strategies should be organized in order to more objectively take stock of the results and agree corrective measures where needed.

**EFFICIENCY**

- Periodic reviews of the organization of the judiciary, i.e., of the local and actual jurisdiction of various courts on the basis of their workload should be prepared in order to ensure even workload distribution between courts on national level, and not just at the level of individual courts.
- The enforcement of court decisions should be strengthened by prioritizing the elimination of serious backlog of cases, mainly created by cases which are prolonged for an unreasonable time.
- The execution of judgments and decisions by the European Court of Human Rights should be strengthened.

**QUALITY OF JUSTICE, INCLUDING PROFESSIONALISM AND COMPETENCE**

- The justice sectors should increase their transparency through provision of practical online information for the general public (e.g. about starting a proceeding, legal aid, costs of proceedings, information about individual courts).
- The evaluation system for judges should be predominantly based on qualitative criteria in combination with quantitative criteria.
- The initial and in-service training of judges and public prosecutors should include enhanced segments on EU law, application of EU law, court management functions, judicial ethics and public communication.
- Specific training programmes should be developed for enhancing the skills and expertise of the court administrative staff.
- The preparation of the budget for the justice sector should be based on a sound methodology that takes into account the needs of the court/prosecutorial system, the workload and the set goals/performance targets.
- Detailed and accurate statistics should be continuously kept. The statistical system should provide full compatibility of data from all justice sector institutions, as well with the European systems, such as the Justice Scoreboard and GOJUST.

**INDEPENDENCE AND IMPARTIALITY**

- The appointment of members of the judicial council or public prosecutorial council should be exclusively based on merit and professional experience.
- The justice sector management bodies (Judicial Councils and Public Prosecutorial Councils) should receive adequate resources in order to act independently. The court system should have direct participation in decision-making regarding the budget for law courts. Judicial/prosecutorial councils should lead the decision-making process regarding the justice sector budget and manage the court and prosecution budgets.
- The process of allocation of cases shall be supervised by the highest justice sector institutions and external actors (academia, civil society, media).
• The room for political interference shall be minimalized and the security of judges’ tenure shall be provided by limiting opportunities for submitting or influencing proposals on dismissal of judges by the executive branch of power.

ACCOUNTABILITY
• The potential conduct which may lead to removal from office or disciplinary sanctions should be clearly defined and strict procedures for dismissals and disciplinary sanctions should be set or reinforced.
• The decision of disciplinary bodies should be subject to an appeal or review before a Court/Constitutional Court or other independent body.
• Strict sanctions shall be imposed for a judge who does not withdraw from adjudicating a case in which their impartiality is in question or where there is a reasonable perception of bias.
INTRODUCTION

The 2016 EU Enlargement strategy confirmed the continued relevance of the fundamentals of the Copenhagen membership criteria, putting rule of law at the heart of the negotiations process. The Strategy places emphasis on tackling issues such as reform of the judiciary early in the accession process, in order to give the recipient country sufficient time to demonstrate a solid track record of sustainable results.

As candidate countries for EU membership, Macedonia, Montenegro and Serbia are obliged to implement serious reforms in their justice sectors. Montenegro and Serbia have already begun negotiations under the chapter 23 – Judiciary and fundamental rights and have developed action plans for this chapter of the acquis. Largely following these plans, both Montenegro and Serbia have adopted Justice Sector reform strategies covering the periods 2014–2018 and 2013–2018 respectively. Macedonia has not yet opened negotiations, but has had the longest running dialogue with the European commission on chapter 23 related priorities and is in the process of developing a Justice Sector Reform Strategy for the period up to 2022.

In its annual country reports on Macedonia, Montenegro and Serbia, the European Commission emphasizes the importance of determining effective policy measures for judicial reforms in line with European standards. Moreover, the Commission demands comprehensive and sustainable reforms in the justice sectors that would have positive impact on the citizens’ lives in these countries and would contribute towards overcoming legal uncertainty, pollicisation of the judiciary, lack of judicial independence and professionalism.

The aim of this comparative analysis is to provide an overview of the main reform measures envisaged in the justice sector reform strategies or draft strategies in Macedonia, Montenegro and Serbia. The study compares key reform measures and approaches and serves as a tool for advocating changes towards the relevant policy-makers. The comparative analysis covers four strategic areas: efficiency; quality; independence and impartiality; and accountability. The strategic areas are in line with the EU Justice Scoreboard,² the elaboration of key areas of interest in screening chapter 23 as per the Directorate-General for Justice and Consumers of the European Commission, relevant standards envisaged by the European Union in each of the areas, European Commission country reports and reports from other relevant international organizations.

The analysis provides an elaboration about the extent to which the national strategies (or draft strategy) point out that specific challenges in the aforementioned areas exist and should be addressed. Furthermore, it focuses on the reform measures and activities, i.e., whether the national strategic documents envisage concrete measures for tackling the noted issues, and whether these measures have been proven as adequate, relevant and justified. Where applicable, the analysis also

²Available at http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm
offers an overview of the achieved results and tangible progress in meeting the envisaged goals of the reforms.

The information presented herein are based on the analysis of the relevant legislation, the Justice Sector Reform Strategies of Montenegro and Serbia, the draft-justice sector reform strategy of Macedonia, official implementation reports of the Strategies and Action Plans, reports on the implementation of Action plans for negotiation on Chapters 23, and reports from national and international institutions and organizations. In addition to content analysis, other sources of information have been included, including the feedback received from justice sector actors and civil society activists from the three countries during the preparation of the analysis.

The reform measures and approaches by each of the three countries are presented under separate sub-areas that fall within the 4 main areas. Even though the authors’ intention was to gather relevant data about each segment, however, not all of the predefined sub-areas are covered in some of the national justice sector reform strategies. Therefore, some of the information provided in the study pertains to only to one or two of the countries, without possibility for comparing data for all the three countries. Another methodological limitation refers to available relevant data for implementation of the Strategies of Montenegro and Serbia, as very often, the implementation reports are not timely published or contain only generic data, without providing fruitful insight in the achieved results.

The presentation of the main challenges, reform measures and results in the three countries begins with analysis of the area of Efficiency, with two sub-areas: Workload and resolving of cases and enforcement. The second part is dedicated to the area of Quality of justice, including professionalism and competence, where the following sub-areas are included: accessibility of justice; system of appointment/selection and promotion of judges and public prosecutors; uniformity of court practice, consistency in court decisions and reasoning in court judgements; financial and human resources of courts and public prosecution; and monitoring and evaluation of court activities. The third part covers the aspects of independence and impartiality, with three sub-areas: management bodies; allocation of incoming cases within a court/prosecution office; and transfer and dismissal of judges. At last but not least, the fourth area of accountability includes two sub-areas: disciplinary procedures and dismissal of judges and public prosecutors; and code of ethic for judges/public prosecutors. The policy study also presents recommendations that are divided according to the defined areas, and are applicable for the three countries during the implementation of their justice sector reforms.
ANALYSIS OF CHALLENGES, REFORM MEASURES AND RESULTS

1. Efficiency

This area covers the following sub-areas:

- Workload and resolving of cases
- Enforcement of court decisions and enforcement of EU law through national courts

1.1. WORKLOAD AND RESOLVING OF CASES

**Macedonia**

Macedonia does not monitor the court system efficiency in accordance with the EU Justice Scoreboard indicators, or the European Commission for the Efficiency of Justice efficiency indicators.

In 2016, Macedonia’s courts resolved 1% more cases compared to the incoming cases during the year, and have thus reduced the backlog.\(^3\)

<table>
<thead>
<tr>
<th>Court</th>
<th>Clearance rate in 2016</th>
<th>Pending cases at the end of 2016</th>
<th>Disposition time (days)(^4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>96%</td>
<td>1,959</td>
<td>121</td>
</tr>
<tr>
<td>Higher Administrative Court</td>
<td>101%</td>
<td>990</td>
<td>90</td>
</tr>
<tr>
<td>Administrative Court</td>
<td>104%</td>
<td>9,156</td>
<td>225</td>
</tr>
<tr>
<td>Courts of Appeal</td>
<td>104%</td>
<td>7,799</td>
<td>90</td>
</tr>
<tr>
<td>Basic Courts</td>
<td>101%</td>
<td>103,301</td>
<td>86</td>
</tr>
<tr>
<td>TOTAL</td>
<td>101%</td>
<td>123,205</td>
<td>122</td>
</tr>
</tbody>
</table>

The clearance rate in most courts is above 100%, which means that the courts worked efficiently, given that they managed to overcome the influx of newly-received cases and reduce the backlog by 8,669 cases. The Supreme Court is an exception in this trend, as it is the only one with increasing

\(^3\) Calculations based on the annual reports of the Judicial Council of the Republic of Macedonia in 2015 and 2016.

\(^4\) The ‘disposition time’ indicator is the number of unresolved cases divided by the number of resolved cases at the end of a year multiplied by 365 (days).
backlog of cases. The disposition time has increased only with the Supreme court and the Administrative Court.

The overall length of court proceedings continuously raises concerns. However, there is no data on the number of court cases that have lasted for an unreasonable amount of time, i.e., over two years. There are also no data available that would help identify the bottlenecks that have caused these cases to drag on.

Montenegro

The efficiency of the judiciary has been acknowledged by the Justice Sector Reform Strategy 2014–2018 as one of its strategic objectives, addressed through a number of strategic guidelines and measures. Key problems which undermine the efficiency of the judicial system, as indicated by the Strategy, are the backlog of court cases, the long-running court proceedings and inadequate judicial network, including the network of advisers and supporting administrative staff in the courts and the prosecution offices.\(^5\)

The Strategy envisages the implementation of the following measures with the aim of strengthening the efficiency of the judiciary:

- Rationalisation of judicial network and misdemeanour system;
- Enhancement of criminal and civil law;
- Reduction of backlog of cases;
- Strengthening of judicial management and administration system;
- Enhancement of alternative dispute resolution methods;
- Further development of Judicial Information System (PRIS).

It is also important to mention that within Chapter 23, Montenegro has committed to meet the following provisional benchmarks, among others:

- continuing “rationalisation of judicial network... which should lead to closure of non-viable small courts”;
- results achieved in “further reduction of backlog of cases in courts... with the increased use of alternative measures such as mediation, judicial settlement and arbitration”.

It is difficult to evaluate the outcomes of these measures, at the European Commission’s Report on Montenegro for 2016 points out the basic problem of lack of statistical data in the judiciary, including inconsistency of data for 2015 with respect to the efficiency rate.\(^6\)

However, some important initial results have been achieved. The first phase of rationalization of court and prosecutors’ network has been completed, resulting in the adoption of a needs analysis that will form the basis for further steps in rationalization, notably closure of all small unsustainable courts and decrease of the number of judges which is almost twice as high as the European average.


The Mid-Term Rationalization plan for 2017–2019\(^7\) has been developed, but it can be put in operation only in 2020, after the implementation of the new judicial information system which will allow for a fair workload distribution between judges – based on the Methodology of Indicative Performance Criteria.\(^8\) The Plan, adopted in the first quarter of 2015, envisages, among other things, the rationalization of the network of courts and state prosecutors.

According to the annual reports on the work of courts the efficiency rate has declined since 2013, despite the introduction of notaries in 2011 and bailiffs in 2014. Namely, the efficiency rate has dropped below 100%, which means that the backlog continued to grow. It is important to state that there are mainly two factors affecting this situation, the continuing influx of new cases and the protracted process of recruitment of new judges and prosecutors, pursuant to the new judicial legislation that was adopted in 2015.

In order to ensure even workload distribution between courts on the national level, and not just at the level of individual courts, the Supreme Court of Montenegro is conducting regular and periodic controls of the work of the courts, including of the misdemeanour court. The Framework Programme for Resolving the backlog of cases was adopted, and in accordance with it, concrete measures have been undertaken, such as: referring judges who are less burdened to a court facing backlog issues, delegation of cases, introduction of paid overtime work, temporary redistribution of work among judges.

The Law on protection of the Right to a Trial within a Reasonable Time\(^9\) is being applied for almost ten years now, but has not managed to speed up judicial proceedings. This Law regulates the conditions and procedures for the protection of the right to a trial within reasonable time, as well as legal remedies for the protection of this right: the request for speeding up the procedure, the request for review and the lawsuit for the violation of this right. Although the Judicial Reform Strategy 2014–2018 states that the implementation of these legal mechanisms has proved effective in making the work of the judges more efficient and protecting the right to a trial within a reasonable time, this stance is disputed. For instance, only a quarter of the requests for speeding up the proceedings were adopted, of which two thirds did not lead to an accelerated procedure within four months.\(^10\)

In regards to the voluntary transfer of judges, it can be stated that reasonable criteria for permanent appointment of judges from one court to another have been provided by the legislation in 2015.

\(^7\) In the course of 2013, the Government adopted the Analysis for the Rationalization of the Judicial Network, and then two-year Plan 2013-2015 for the implementation of the judicial network envisaged measures for the implementation of the conclusions from the mentioned Analysis in the period 2013–2015. Under interim benchmarks in Chapter 23, Montenegro has committed to develop a new analysis and the Plan for the rationalization of the Judicial Network, as cited above.

\(^8\) The methodology was developed and adopted by the Judicial Council, based on the Case-weighting Study that was developed in 2015, under the project EU Support to Rule of Law (EUROL I), but its implementation is postponed for 2020, until the installation of the Judicial Information System.


Serbia

The Serbian Supreme Court of Cassation (SCC) in 2013 has adopted a Unified Backlog Reduction Plan with clear evaluation of the problem as well as measures for its resolution. In 2016 the SCC adopted the Amended Unified Backlog Reduction Programme for the Period 2016–2020.

Efficiency indicators, as set in the Unified Backlog Reduction Plan and related documents, refer to the number of pending cases, the duration of court proceedings, the cost of the judiciary, and the level of respect for human rights. The Programme sets forth the general strategic goal – by 2018 to reduce by 80% the backlog of court cases (including enforcement cases). The Programme gives priority to the urgent handling of cases pending for more than ten years in civil matters, i.e., more than five years in criminal matters.

The Unified Backlog Reduction Programme contains specific implementation-related measures and activities, referring to: 1) introduction of internal organizational measures in order to identify the actual number of backlog cases and reduce their number (backlog reduction teams, marking of backlog cases, re-organization of work in the court registry offices, e-justice, and more efficient scheduling of hearings); 2) implementation of procedural authorizations in civil and criminal proceedings at the level of the first instance courts in order to reduce the duration of court proceedings and prevent the occurrence of an increasing number of backlog cases; 3) improved cooperation between the courts and undertaking external measures to foster cooperation between the courts, other public authorities, and in particular, the police, the public prosecutor’s offices, social services, local governments, attorneys; 4) increased level of public trust and confidence in the judiciary as a result of positive effects of this national plan for backlog reduction.

The President of the Supreme Court of Cassation has established a Working Group on this matter comprised of judges of the Supreme Court of Cassation, the Administrative Court, Commercial Appellate Court, the Misdemeanour Appellate Court, appellate, higher and basic courts in the Republic of Serbia. The group monitors the implementation of the Unified Programme and the dynamics of resolving the backlog of court cases and puts forward measures necessary to improve the process.

The implementation of the Unified Backlog Reduction Programme was hampered by two strikes of attorneys, members of the Serbian Bar Association.

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13 From 1,773,475 recorded at the end of 2013, to 355,000.
1.2. ENFORCEMENT OF COURT DECISIONS AND
ENFORCEMENT OF EU LAW THROUGH NATIONAL COURTS

Macedonia

The recommendations in the international reports regarding the improvement of enforcement of court decisions are mainly the following: the judgments and decisions of the European Court of Human Rights (ECtHR) should be effectively and timely implemented in compliance with the obligations of the country according to the European Convention on Human Rights, and for each separate case or a category of cases, a list of practical and efficient measures shall be prepared; rapid execution of the decisions of the ECtHR against the country shall be secured, especially through introduction of practical and effective measures for each category of cases.

Part of the interviewed persons provided recommendations in the same directors, while highlighting that by application of the European Convention on Human Rights on national level and the enforcement of the judgments and decisions of the ECtHR, the legal instrument of repeating of the procedures should be revised. This should enable efficient and effective repeating of the procedure, by following the directions of the judgment which is being executed. There is also a need to intervene in the deadline for raising this legal option, which should be triggered starting from the day of receipt of the judgment.

Surveys show that the number of judges that have directly applied some of the sources of the EU law, or even the Stabilization and Association Agreement with the Union, is negligible.

Montenegro

The Montenegrin justice sector faces a serious challenge with the enforcement of court decisions. A large number of decisions are caught in lengthy ineffective enforcement procedures. The Montenegrin Strategy for justice sector reforms points out the need for strengthening the capacities for efficient enforcement and requests proper implementation of the law on enforcement, with focus on securing functionality of the system of public enforcement agents. A separate measure in the strategy refers to constant monitoring of the efficiency of the new system for enforcement and the work of the public enforcement agents. Furthermore, the Strategy defines that in the area of enforcement of court decisions, the statistical system in line with CEPEJ methodology should be able to measure the rate of execution, the costs and the length of the enforcement proceedings.

The 2016 European Commission Report on Montenegro concludes that the cooperation of Montenegro with the European Court of Human Rights (ECtHR) remained good. The Government

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14 Recommendations of the senior experts’ group on systemic rule of law issues relating to the communications interception revealed in spring 2015.
has concluded friendly settlements in 9 cases pending before the Court, related to the length of judicial proceedings.

**Serbia**

The Justice Sector Reform Strategy in Serbia includes a strategic goal dedicated to establishing efficient and sustainable system for enforcement of court decisions. The strategy points out the need for determining clear competences of the Ministry of Justice, the Chamber of Bailiffs and the courts with the purpose of applying the law on enforcement and increasing the effectiveness of judgments’ enforcement in Serbia.

Serbia has also developed a Special Programme on Resolving Enforcement Backlog of Cases in the Courts in Serbia for the period 2015–2018\(^\text{17}\), which was adopted by the Supreme Court of Cassation. The effects of these measures are already being felt with noted improvements in 2017.

According to the 2016 European Commission Report on Serbia, the lack of proper execution of ECtHR judgments continues to be of great concern. The seriousness in the situation is seen in the fact that there are a total of 1,226 pending applications from Serbian citizens before the court in Strasbourg.

\(^{17}\) I Su – 1 256/2014 dated 18 November 2014.
2. Quality of justice, including professionalism and competence

This area covers the following sub-areas:

- Accessibility of justice
- System of appointment/selection and promotion of judges and public prosecutors
- Greater uniformity of court practice, consistency in court decisions and reasoning in court judgements
- Financial and human resources of courts and public prosecution
- Monitoring and evaluation of court activities

2.1. ACCESSIBILITY OF JUSTICE

2.1.1. Practical information about the judicial system for the general public

Macedonia

The new centralized court portal, www.sud.mk, which provides information on the Judicial Council and all the 34 courts on the territory of Macedonia, is a positive development in addressing the lack of easily accessible information on the court system. However, a lot remains to be done in order to provide sufficient and reliable information to the general public.

Montenegro

The need to strengthen public confidence in the work of courts and to better inform citizens about the court procedures remains one of the reform priorities in Montenegro, despite the improved transparency of courts and the state prosecution offices. The issue of transparency and publicity of the work of judicial institutions has been recognized as one of the key strategic goals of the 2014–2018 Judicial Reform Strategy, which states that “the public at all times must have access to information held by judicial institutions, primarily decisions made by judges and prosecutors, as it directly contributes to strengthening citizens' confidence in the judiciary”.

The Action Plan for the period 2014–2016 is considerably more relevant in this respect than the previous one, and contains a set of measures:

- Continually improve citizen information on the possibilities of obtaining information from judicial institutions;
- Further enhance the transparency of the work of the Judicial and Prosecutorial Councils;
- Develop the capacity of judicial institutions for public relations through organization of training programs for public relations officers;

18 E.g. about starting a proceeding, legal aid, costs of proceedings, information about individual courts.
• Regularly update the websites of courts, of the State Prosecutor’s Office, the Judicial and the
  Prosecutorial Council;
• Improve the level of information of citizens on the functioning of experts, notaries, bailiffs
  and other professionals;
• Publish all judgments on the internet without delay, as well as the annual work reports of
  courts.

Despite such comprehensive list of measures defined in the Judicial Reform Strategy 2014–2018, the
implementation of these measures started to be more effective only after the launch of the court
portal www.sudovi.me. The announcements and press releases on the court sessions, as well as the
reports of the Judicial Council and the decision it makes are published on this portal. In the previous
period, the practice of holding regular press conferences at the level of all courts in Montenegro and
appointing spokespersons was established, with with the aim to present the work results to the local
community. Training for Public Relations Officers in Judicial Institutions is also provided.

Improvements are noticeable at the level of state prosecution as well. On the website
www.tuzilastvocg.me public announcements, summaries of confirmed indictments, report on the
work of Prosecutorial Council, and journalists’ questions and answers can be found, as well as other
information on the work of the state prosecution.

**Serbia**

Serbia’s Justice Sector Reform Strategy acknowledges that there is a lack of online information about
the judicial system, but it doesn’t directly address the need for securing online information about
the costs of proceedings, necessary documents for starting a proceeding etc. Instead, the Strategy
intends to improve the overall transparency of the justice sector through securing comprehensive
websites, establishing info points and public relations offices, without defining the type of
information that should be made available through the aforementioned channels for communication
with the citizens.

**2.1.2. System of legal aid**

**Macedonia**

The Law on free legal aid was adopted in 2009, and three basic issues were detected at the
beginning of its implementation: 1) lack of accessibility for the vulnerable groups; 2) restrictive
criteria for determining parties that may provide legal aid; 3) enormously high costs paid out to only
39 out of 329 lawyers registered for providing free legal aid.

The number of submitted requests for free legal aid remains relatively low. This is partially due to
the regulations that forbid advertising of providers of free legal aid, thus not allowing the
information about the conditions and the modalities for its use to reach the people in need.
Furthermore, the percentage of approved requests is under 50% of the submitted requests. The
annual budget of the country for free legal aid has been limited to 3,000,000 MKD (under 50,000
EUR) in the past several years, representing one of the lowest budgets in Europe.
The European Commission pointed out\(^\text{19}\) that there is lack of financing for the system of free legal aid on a level that is adequate for the European standards, and that a holistic approach is lacking due the segmentation of the functions of different state and non-state actors within the system for free legal aid.

**Montenegro**

The Law on Free Legal Aid\(^\text{20}\) was adopted in mid-2011 and has begun to apply from January 1\(^{st}\) 2012. Immediately after the adoption of the Law, the Ministry of Justice adopted also the Plan for its Implementation, and established a working team in charge of controlling the conduct of activities and reporting on implemented activities. However, the implementation of this Law was hampered, and still is, by inadequate conditions for the implementation, primarily by the lacking personnel and administrative capacity of judicial institutions to apply the law, as well as by the lack of secondary legislation.

Due to these shortcomings, in 2014, the Ministry of Justice began to work on amendments of the Law, which were adopted in April 2015. The law was upgraded by recognizing the right to free legal aid to victims of domestic violence, regardless of their property status. However, the Law it still does not foresee the possibility of obtaining free legal aid in administrative proceedings, thereby persons with weak financial status remain free of legal aid in the proceedings related to social protection, pension rights, disability insurance, labour disputes, etc. Also, victims of torture or abuse and discrimination are still not recognized as prime target groups for the implementation of the Law on Free Legal Aid. Nonetheless, public opinion surveys implemented by civil society organizations indicated that citizens still do not have enough information and knowledge about the possibilities and the rights provided by the Law on Free Legal Aid, due to, inter alia, poor promotion of the Law among these target groups.\(^\text{21}\)

**Serbia**

The lack of adequate legislation for free legal aid is an issue for more than a decade in Serbia. Constitutional provision on legal aid within the Article 67\(^\text{22}\) (not free legal aid), is unclear and is used by the Serbian Bar to argument the limitation of the providers of free legal aid. These internal discussions made the process of adoption of the Law on Free Legal Aid look as an unprecedented, yet impossible task for a government, with a constant threat for a strike of the lawyers\(^\text{23}\).

The National strategy for justice sector reform doesn’t include measures on strengthening the provision of free legal aid. It can be concluded that the intention of the policy makers was to address the issues related to free legal aid through a separate strategy, as it is stated that in the process of

\(^{19}\) EC Report on Macedonia for 2016. 
\(^{20}\) Official Gazette of Montenegro, No. 20/11, 20/15 

\(^{22}\) Article 67 defines legal aid providers and obligations on the side of the state, through local self-government and obligation on the side of the Bar chamber. It does not define free legal aid.

\(^{23}\) Similar actions of the bar chamber, paralizing the whole judiciary are described further within this research.
preparation of the National Strategy for justice sector reform 2013–2018, a separate Strategy for development of the system for free legal aid was to be taken into account.

2.1.3. Physical accessibility of justice sector institutions

Montenegro

In terms of accessibility of the judicial buildings, only the Montenegrin Judicial Reform Strategy recognized this problem and addressed it through its strategic aim of improving infrastructure and security of judicial and physical facilities, as well as of improving access to judicial institutions for persons with disabilities. There are four measures that are envisaged for the realization of this strategic aim:

1. Improve the spatial capacity of judicial institutions;
2. Continue to improve the security of judicial facilities and to improve the conditions for adequate accommodation and equipment in the judiciary.
3. Make additional efforts to ensure that approach to judicial institutions is adapted to persons with disabilities, with the furnishing of buildings with special add-ons that will enable people with disabilities to move smoothly.
4. Improve the rules and practices of dealing with vulnerable categories (minors, victims of crime, persons with disabilities).

In order to implement the above mentioned measures, in May 2015, an Inter-agency Working Group was established. It produced an Analysis of the Normative Framework which refers to the security of judicial facilities, and assessed the existing and necessary infrastructure for adequate provision of facilities for judicial authorities. This analysis indicated that full and unimpeded access to court premises is provided in only three courts (14.28%), while in eight courts (38.09%) persons with disabilities can not access the court premises. The largest number of courts – 10 (47.62%) is somehow adapted to persons with disabilities. During 2016, the building of the Supreme Court of Montenegro has been equipped with an elevator for persons with disabilities.

2.1.4. Legislation and court judgements are published online in a timely manner

Serbia

The Justice Sector Reform Strategy for Serbia acknowledges that there is a lack of information about the judicial system and therefore it includes a measure aimed at securing access to legal acts, court rulings and proceedings to the public. The essence of this measure is to secure the access to information in timely manner, while having in mind the privacy and security of juveniles, victims and witnesses. The Strategy also stipulates that this database should be regularly updated.

This measure should be realized through three strategic directions:

- Establishing and practicing a maximum access to court documents by respecting the rules of data and privacy protection;

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24 Available at: [http://www.mpa.gov.me/biblioteka/strategije](http://www.mpa.gov.me/biblioteka/strategije)
• Creating unified, systematized and free of charge electronic database of legal acts and court rulings which will be constantly updated;
• Making available records of judicial proceedings and the database of legal acts to citizens which don’t have access to internet through mechanisms like installing public terminals in law faculties, court buildings and public libraries.

2.1.5. Availability of alternative dispute resolution mechanisms

Macedonia

The available mechanisms for alternative dispute resolution in Macedonia, such as mediation and arbitration, are not utilized in a manner that would contribute towards improving the accessibility of justice and lowering the number of court cases. The interviewed experts stated that there is evident need for better legal regulation of the alternative dispute resolution mechanism as obligatory in some of the proceedings, as well as greater promotion of the mechanism.

Montenegro

With the aim to strengthen the efficiency of the judiciary and enable better access to justice for the citizens, the Montenegrin Strategy envisages a measure “Promotion of alternative dispute resolution methods”. It is expected that the increased use of alternative measures such as mediation, judicial settlement and arbitration, will contribute to accessibility of justice and further reduction of backlog of cases in courts.

Serbia

The National strategy for justice sector reform emphasizes the importance of advancing the access to justice through alternative dispute resolution for all citizens, regardless of their social or material status, political attitude or ethnicity. One of the strategic directions in the document is establishing an efficient and sustainable system for dispute resolution through mediation by advancing the normative framework and implementing standardization procedures and accreditation of basic and special programmes for education of mediators. The measure also stipulates the establishment of a register of licensed mediators based on pre-defined criteria.

2.1.6. Media communications in courts and court system institutions

Macedonia

A critical review may be addressed to the underdeveloped internal channels for implementation of the public relations policies and the communication between management bodies in the justice sector. Furthermore, there is a lack of multiple formal channels and capacity of the judiciary to effectively communicate with the legislative and executive branches of power for the most

25 Judicial or non-judicial mediation, arbitration, conciliation.
important strategic and operative issues. In the previous period, public relations officers were appointed in every court, while in the Basic Courts Skopje 1 and Skopje 3, the Supreme Court, the Judicial Council and the Public Prosecution Office, professional spokespersons were hired. However, this measure is obviously insufficient for securing appropriate transparency of the work of the judiciary.

**Montenegro**

In the previous period, the practice of holding regular press conferences at the level of all courts in Montenegro and appointing spokespersons was established, with the aim of presenting results of work to the local community. Training for Public Relations Officers in Judicial Institutions is provided.

During 2015 and 2016, the Supreme State Prosecutor established the practice to organize meetings with representatives of civil society organizations and with media editors. The Prosecution also developed a comprehensive Public Relations Strategy 2016–2018 with accompanying Action Plan.

**Serbia**

There is a need of improvement of the transparency in the work of the High Judicial Council and the State Prosecutorial Council as there is insufficient information published on their work and decisions; they do not have active media communication units/spokespersons; there is lack of reporting on their work to the public, Parliament or other forum.

The National Strategy foresees measures aimed at improving the overall transparency of the justice sector through establishing info points and public relations offices, which should contribute to overcoming the noted lack of transparency in the work of the justice sector institutions.

### 2.2. SYSTEM OF APPOINTMENT/SELECTION AND PROMOTION OF JUDGES AND PUBLIC PROSECUTORS

**Macedonia**

The independence of the judiciary, as a crucial element of the judicial branch of power, is primarily secured through the selection of judges. Therefore, it is obligatory to implement the selection process through mechanisms guaranteeing the independence in practice, having in mind that this standard cannot be met solely by adoption of appropriate legal acts. The extent of the independence of the judiciary depends on two key factors:

The civil society organizations which monitor the selection of judges on the meetings of the Judicial Council reported cases of violations of the procedure and selection of candidates with lower number

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26The EU Justice Scoreboard classifies this sub-area under judicial independence, while the European Commission country reports classify it under Professionalism and competence.
of points. Additionally, results from a survey conducted with lawyers shows that a staggering 90% of them consider that the Judicial Council is not an independent body. In this sense, the European Commission in its latest report on Macedonia for 2016 indicates that there is no framework in place to protect judges against external pressure.

**Montenegro**

In line with the Law on Judicial Council and judges, the implementation of the reform of the appointment of judges under the newly established uniform system of selection of candidates for judges began in October 2016. With the first public call for election of judges the Judicial council deviated from the Plan of vacant judicial positions, without providing any explanation.

**Serbia**

According to the Law on Judges adopted in 2008, judges who were at that time in office, had an obligation to take part in new election organized by the High Judicial Council of Serbia, otherwise their mandate would be terminated on December 31, 2009.

The decision for re-election of judges, as well as general reelection of public prosecutors by the State Prosecutorial Council, lacked adequate explanations and could be qualified as arbitrary, instead of being based on objective criteria. Such actions by the High Judicial Council and the the State Prosecutorial Council led to a motion before the Constitutional Court of Serbia initiated by judges and prosecutors, ending in 2012 with a successful Constitutional Appeal and decision of the Constitutional Court to annul the reelection process. The state of Serbia had to pay enormous sums to the judges and prosecutors as salaries for the 3 year period in which they were removed from office, and also had to reinstate the majority of judges and prosecutors in office – while the system was not projected to have such a high number of judges and prosecutors.

The National Strategy for justice sector reforms designates the process of selection and promotion of judges and public prosecutors as one of the highest priorities. The Strategy points out that these processes should be based on clear, objective, transparent and pre-defined criteria, as a prerequisite for enhancing the public trust in the justice system and creating legal certainty and independence of the judges and public prosecutors, whose career must depend only on the results of their work. The establishment of the Judicial Academy as a compulsory condition for selection of judges and public prosecutors is the first step towards securing objective and transparent process.

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2.2.1. Professional evaluation of judges

Macedonia

The interviewed persons note a lack of professional evaluation system focusing on qualitative criteria, and that the indicators for measuring performance of judges are not appropriate. The 2016 European Commission country report highlights the noted lack of evaluation system focusing on appraisal of judges’ core competencies and the heavy focus on quantitative criteria. Therefore, changes are needed in the existing evaluation system, in direction of establishing a performance management system with a focus on enhancing the quality of justice, instead of quantitative measures with questionable results and risk for manipulation.

Montenegro

Montenegro periodically evaluates the performance of judges and state prosecutors, which is regulated by the laws and specified in more detail by secondary legislation adopted by the Judicial and Prosecutorial Councils in 2015 and 2016. In March 2015, two main criteria for promotion of judges and state prosecutors were set forth in the new legal acts: performance evaluation and evaluation of interviews with candidates. In practice, it was implemented only in two courts (Basic Court in Niksic and Basic Court in Cetinje), within a pilot project, envisaged by measures in the Action Plan 23. The results of these evaluations have not been published yet.

Serbia

A new evaluation processes for judges and prosecutors were developed by the High Judicial Council and the State Prosecutorial Council and are now being tested. The Action Plan for implementation of the strategy includes a measure on improvement of the procedures for first election, appointment for permanent office and advancement in the career for judges and public prosecutors/deputies. In November 2016 the High Judicial Council adopted two relevant by-laws. Also, the Action Plan focuses on development of institutional capacities of the High Judicial Council and State Prosecutorial Council for the first election, appointment to permanent offices, and advancement in the career of judges and public prosecutors.

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28 Application of the new rules on promotion and evaluation of judges and state prosecutors was postponed until 1 January 2016; thus, the appointment of judges to higher instance courts and promotion of state prosecutors was meanwhile carried out in line with the previously applicable laws.
29 Criteria and standards for the evaluation of expertise, competence and worthiness of candidates for judges who are being elected for the first time, and a Rulebook on criteria and standards for evaluation of expertise, competence and worthiness for the election of judges with permanent tenure to another or higher court and on criteria for proposing candidates for court presidents (“Official Gazette of RS”, No. 94/16).
2.3. GREATER UNIFORMITY OF COURT PRACTICE, CONSISTENCY IN COURT DECISIONS AND REASONING IN COURT JUDGEMENTS

Macedonia

According to the draft Justice Sector Reform Strategy in Macedonia, the lack of uniformity of court practice is hampering the legal certainty of the citizens. While deciding on cases with similar legal grounds, there are notable deviations in the interpretation and application of laws by the same departments in the basic courts or appellate courts. This issue is specifically raised for the decisions of the appellate courts and the draft strategy is facing the challenge to find modalities about securing uniformity of the court practice in the courts of first and second instance.

Montenegro

As regards the uniformity of the court practice, the Justice Reform Strategy and its Action Plan 2014–2016 take note of the fact that "apart from homogenization of judicial practice, it is necessary to establish mechanisms of monitoring, analysis and availability of practices of the European Court of Human Rights (ECtHR) and the European Court of Justice". There are four strategic guidelines envisaged by the Strategy in this area, which are also detailed in the Action Plan for the implementation of the Strategy 2014–2016:

1. Work on securing uniformity of the national court practice with the practice of the European Court of Human Rights, including by monitoring and analyzing the practice of the ECtHR in relation to cases against Montenegro;
2. Further inform judicial officials on the practice of the European Court of Human Rights; In particular judges will be provided access to ECtHR decisions by translating of a larger number of decisions of this court, as well as by promoting among judges the information on the the possibility of using the European Human Rights Case Law Database intended for the countries of South East Europe.
3. Enhance the capacities of the Supreme Court's Unit for monitoring the practice of the European Court of Human Rights, especially in terms of analyzing, translating and making available the entire court practice to judges and state prosecutors;
4. Advance the knowledge of justice sector officials on the EU legal system, the role and the practice of the European Court of Human Rights.

In order to ensure greater consistency among the decisions of the national courts and to facilitate the alignment with the European Court of Justice and ECtHR, a special Unit within the Supreme Court of Montenegro was established in 2012. This Unit is involved in monitoring and analyzing the practice of domestic courts, as well as of the European Court of Justice and ECtHR, in particular in relation to decisions in cases against Montenegro. In this regard, the decisions of the domestic

30 Page 30.
31 http://www.ehrdatabase.org/Index
courts are available at the court portal after anonymization process, while the decisions of the ECHR are also published.

In order to improve the process of aligning the decisions of the Montenegrin courts with ECtHR and the European Court of Justice which is currently reflected in only few judgements where the ECtHR jurisprudence was drawn (notably by the Constitutional Court of Montenegro), the Supreme Court of Montenegro has recently issued Formal instructions to the judges on the form of referral to judgements of the European Court, in order to align the reasoning of the national courts' judgments with the ECtHR. The judgments are available to judges through the European Human Rights Case Law Database for the countries of South East Europe and the HUDOC base.32 Also, judgements of the European court may also be found at the website of the Supreme Court of Montenegro.

**Serbia**

Another issue that was high in the focus of the Ministry of Justice and with the interviewees is the uniformity of court practice. Not much progress has been achieved in this area, as a working group for drafting the legislation for unification of court practice was formed in 2015, but conducted no visible work nor went out with an elaborated proposition.

A separate chapter in the Strategy for justice sector reform in Serbia, as well as in the Action Plan for implementation of the Strategy is dedicated to the uniformity of case law. This is planned to be achieved through improvement of the normative framework in order to regulate the harmonisation of court decisions and more precisely define the role of the Supreme Court of Cassation in this area, as well as to fully ensure harmonisation with the decisions of the European Court of Human Rights and practice of other relevant international institutions. Additional measure in the Strategy focuses on advancing the methodology of preparing court decisions and securing uniformity of the court practice through initial and continuous training at the Judicial Academy.

### 2.4. FINANCIAL AND HUMAN RESOURCES OF COURTS AND PUBLIC PROSECUTION

#### 2.4.1. Financial resources

**Macedonia**

The European Commission expresses concern that the budget for the courts for 2016 is significantly lower than the European average per capita.33 Namely, the 2016 budget for all courts – with the exception of the Constitutional Court – is slightly increased in relation to the budget plan for 2015 and amounts to approximately 30 million Euros.34 That is almost 15 Euros per capita, while the European average is about 36 Euros.35

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32 [www.hudoc.echr.coe.int](http://www.hudoc.echr.coe.int)
34 Amending the Budget of the Republic of Macedonia for 2016.
35 2014 Data; European judicial systems: Efficiency and quality of justice, CEPEJ, 2016.
Macedonia has expenditures for the courts that are smaller than any EU member state, while in the Western Balkans only Albania has lower spending per capita\textsuperscript{36}. On the other hand, according to the share of public expenditures for the courts in the gross domestic product, Macedonia is among the first six countries in Europe – and those are all the former Yugoslav republics\textsuperscript{37}.

Although the Judicial Budget Council is formally functioning, in practice it is forced to accept the restrictions imposed by the Ministry of Finance, which do not respect the legally prescribed amounts intended for the judicial system. The legal provision for the budget to represent 0.8\% of the GDP is not implemented. The Court Budget Council in the past has made an attempt to establish the cost of various types of cases, on the basis of which it would make the annual projection of budget needs and the planned scope of work in the judiciary, but in the practical application of this concept there was an obstacle due to the different level the staffing of individual courts and variances in the workload.

Several weaknesses are noted regarding the judicial budget. Furthermore, the biggest part of the budget (around 90\%) is used for salaries in the justice sector.

\textit{Montenegro}

Although the Judicial and Prosecutorial Councils are formally in charge of the preparation of the budget for courts and the state prosecutor’s office, it is still in effect proposed and decided by the executive branch of power. Thus the courts and the prosecution do not have a decisive say on budgetary matters. According to a 2016 CEPEJ report on the efficiency of judicial systems, Montenegro allocates around 26 million of euros annually (42\€ per capita), while most European countries invest between 45 and 60\€ per capita.

\textit{Serbia}

Lack of adequate resources for management bodies (judicial council or public prosecutorial council) is evident. Budgetary autonomy is not still guaranteed, although significant funding is coming also through the Multi Donor Trust Fund for Justice Sector Support in Serbia\textsuperscript{38} for concrete projects of the High Judicial Council and the State Prosecutorial Council.


\textsuperscript{36}Increasing the efficiency of Macedonia’s and Montenegro’s justice system: Introducing an innovative EU monitoring and evaluation mechanism in the sphere of administrative law, Association Zenith, 2014.

\textsuperscript{37}Data for 2014.; European judicial systems: Efficiency and quality of justice, CEPEJ, 2016.

\textsuperscript{38}http://www.mdtfjss.org.rs/
2.4.2. Number of judges, prosecutors and support staff

Macedonia

Noting that in November 2015 the Judicial Council adopted a decision to reduce the number of judges from 740 to 636 without assessing the needs and the impacts, the European Commission in its last country report assesses that there is no comprehensive human resource management strategy in the judiciary. 130 new support staff were recruited to the Public Prosecutor’s Office in 2015, again without a clear strategy in place. At the end of 2016, there are 20 less active judges compared to the end of 2015. On average, the number of active judges declined from 603 in 2015 to 576 in 2016.39

In 2016, Macedonia’s court administration numbered 2,384 employees. Although 97 employments were realized in 2016, there is still lack of adequate support staff in the courts.40 It is worrying that only 14.5% of the court administration is composed of court clerks, and there are no adequate criteria for selection of court administrators. Statistical data show that the percentage of women is 62%, versus 58% men. According to ethnicity, Macedonians comprise 82% of the court administration, Albanians 13%, Turks and Roma 1% each. Serbs, Vlachs and Bosniaks are represented by less than one percent.41

The previously adopted amendments of the Law on court administration may only worsen the situation, having in mind that the requirements for education and experience for the court administration were removed. As a result, more persons are receiving salaries from the state budget, but are less competent for executing legal obligations, therefore impacting negatively on the quality of justice.

The public prosecution evidently lacks capacities for strategic planning, and budgetary and financial management.

The system for court forensics has significant impact on the efficiency and quality of court proceedings. There are many critical opinions regarding the current model for organizing and functioning therefore a revision of the system will be implemented.

Montenegro

As for the judicial management and administration system, two of the strategic directions for enhancing the system of judicial management and administration in the Action plan for implementation of the Judicial Reform Strategy 2014–2016 refer to the adoption of Rulebook on indicative benchmarks for determining the necessary number of judges and other court

40 Ibid.
41 Ibid.
employees, and development of mid-term and long-term human resource management strategies in judicial institutions.

The Strategy of Human Resource Management and Development in Judicial Institutions was adopted in June 2016, for the period 2016–2018. It refers to the Judicial Council, courts, Prosecutorial Council, state prosecutors’ offices, Judicial Training Centre, as well as to notaries and public bailiffs. It is based upon the World Bank Analysis rather than on the assessment of current situation and needs, and as such, provides only a brief analysis of the available capacities of judicial institutions, including the availability of the administrative staff.

The number of judges is almost twice as high as the European average. The Mid-Term Rationalization plan for 2017–2019, among other things, envisages the rationalization of the number of judges and state prosecutors. The document requires that the decisions on the human and financial resources in the judiciary are based on the Evaluation reports of the European Commission for the Efficiency of Justice (CEPEJ).

**Serbia**

In 2009, the High Judicial Council decided to reduce the number of judicial positions by more than 25% – from 2,413 to 1,838 judges. At that time, 2,230 judicial positions were occupied. This decision and the subsequent decision for re-election of judges, as well as general re-election of public prosecutors by the State Prosecutorial Council, lacked adequate explanations and could be qualified as arbitrary, instead of being based on objective criteria.

The Action plan features establishment of effective and efficient network of courts and public prosecutors’ offices, improvement of internal procedures for the work of the ministry, courts and public prosecutors’ offices and enhancement of the infrastructure, which in the long term, should contribute towards meeting the needs of the justice system in sense of number of judges, public prosecutors and support staff.

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42 The Rulebook, adopted by the Ministry of Justice is based on so-called work norm (expected number of resolved cases per judge), each judge is obliged to accomplish in one year. In order to better define the “promptness of court work” one of the indicators of CEPEJ – clearance rate, as the ratio between new cases and completed cases during given period in percentages, has been adopted.

43 An inconsistency between the Strategy and its accompanying Action Plan has been noted in this part, meaning that the guideline relating to the development of specialization and professional training programmes is not to be found among the strategic guidelines of the Action Plan.

44 World Bank Group, 2016, *Analysis of Human Resources Management in the Montenegrin Judiciary*, available at: [https://openknowledge.worldbank.org/handle/10986/25186](https://openknowledge.worldbank.org/handle/10986/25186). Analysis apostrophes the need to more effective use of these numerous and varied human resources, including use of resources that are not related to workforce, such as technology and basic resources, such as judicial service delivery ".

45 In the course of 2013, the Government adopted the *Analysis for the Rationalization of the Judicial Network*, and thentwo-year Plan 2013–2015 for the implementation of the judicial network envisagedmeasures for the implementation of the conclusions from the mentioned Analysis in the period 2013 – 2015. Under interim benchmarks in Chapter 23, Montenegro has committed to develop a new analysis and the Plan for the rationalization of the Judicial Network, as cited above.
With the aim to secure better and more realistic strategic and financial planning, the Action Plan for implementation of the Strategy for justice sector reform recognizes the need for preparation of a study for the real needs of the justice sector, with a projection of the number of judges, public prosecutors and support staff required by the judicial system, accompanied with analysis of the workload of the justice sector officials.

2.4.3. Training of judges, public prosecutors and support staff

**Macedonia**

The Macedonian justice sector faces serious challenges in developing competent and professional staff in the institutions. The interviewed persons agree that the education system is the first point which led to hyperinflation of law professionals, without imposing strong filters for production of highly educated professionals. Furthermore, there are issues with the new approach for completing the bar exam, the quality of the curriculum and the implementation of the initial and in-service training programme at the Academy for judges and public prosecutors. The expert public criticizes the manner of evaluation of the candidates for the Academy, which allegedly fails to meet the standards of objectivity.

According to the European Comission country report for 2016, the Academy provided 267 in-service training sessions to 5,888 participants in 2015. Of the 13 candidate judges and prosecutors from the fifth generation who successfully completed their pre-service training in February 2016, 12 have already been appointed in basic courts and basic public prosecutor’s offices. 37 new candidates enrolled for pre-service training at the Academy. However, the report notes that the Academy still lacks sufficient support staff.

Significant component that undermines the overall quality of justice is the slow adjustment of the human resources in the justice sector institutions to the new technical developments. Besides the lack of capacities for use of computers and shared databases, the court budget for modernization of the technical equipment is not meeting the demand of the institutions.

Furthermore, insufficient attention is devoted to the human resource management in sense of providing trainings for the court staff for communication with parties and media and unambiguous presentation of the competences and achieved results of their institution. This aspect is very important in the quest for raising the public trust in the judiciary.

**Montenegro**

The Centre for Training in Judiciary and State Prosecution has been transformed from an organizational unit of the Supreme Court to a separate legal entity. In 2016 it began the implementation of programs of initial and continuous training in accordance with the new laws, adopted in 2015. Apart from organizational changes, most measures refer to assessment of training needs and delivery of effective training activities.

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The Action plan for implementation of the Judicial Reform Strategy 2014–2016 stipulates a strategic direction concerning the implementation of special training programs for the president the courts within the framework of continuous education to improve the image of the court. These programs have not been implemented at all, as stated in the last report on the implementation of the Action plan measures from January 2017.\(^7\)

**Serbia**

When it comes to trainings of future judges and prosecutors as well as a permanent education of those already in the system, Serbia’s Judicial Academy is singled out as a high quality institution, with different courses and focuses in their standard training curricula. Unfortunately it lacks resources to conduct a wide set of trainings. The interviewed judges and prosecutors seriously questioned the rationality of the option to promote the Academy to a “single entry point” for the judiciary, as it may be used to politicize the path to becoming a judge or prosecutor.

Serbian judges also have an obligation to report on the usage of international standards and UN Conventions in their verdicts. However, the number of used standards is below the expected minimum. Thus, the Judicial Academy, together with OHCHR is organising trainings for judges on international standards and a specific manual will be produced on this matter.

The Justice Sector Reform Strategy features measures on improving the training for judges, public prosecutors and support staff through further strategic and infrastructural strengthening of the Judicial academy and advancing the organization and the rules of procedure of the Academy. It also puts emphasis on improving the mentoring system and the evaluation during the education.

The Action Plan of the Strategy recognises that there is a need for further improvement of the continuous training at the Judicial Academy aimed at: Strengthening practical knowledge and skills; Improving knowledge on the case law of the European Court of Human Rights and the case law of the Constitutional Court; Understanding of international standards and their practical implementation; Standardization of legal writing; Achieving uniformity of case law; Ethics and discipline; Improving training for judges and public prosecutors/deputies specialized in specific areas. A separate measure addresses the need for further strengthening of the continuous training program segment related to human rights and EU law.

### 2.5. MONITORING AND EVALUATION OF COURT ACTIVITIES

**Macedonia**

In order to fully adapt the performance evaluation of the judiciary in the Republic of Macedonia to the common european evaluation frameworks, an increase in internal analytical capacities of the

courts is necessary. The 2011 Court statistics methodology is not implemented in practice, and is not fully aligned with the EU Justice Scoreboard indicators, or the CEPEJ indicators.

Though the courts publish annual reports regarding their work, they only provide raw statistical data such as: backlog at the beginning of the year, incoming cases, total caseload, resolved cases during the year, caseload at the end of the year and difference between pending cases at the beginning and at the end of the year.

A gradual introduction of qualitative criteria which focus on the contents and complexity of cases which judges decide on would allow them to focus more on the opinions of higher instance courts and establish unified positions among judges on certain issues, while relieving them from the “stress” of not fulfilling nominal quantitative quotas. If implemented properly, a slight increase in administrative staff and introduction of qualitative criteria for the evaluation of judges, these measures may improve the quality of decision making in the courts without significantly impacting efficiency.

The draft Justice Sector Reform Strategy envisages inclusion of civil society representatives in the working groups for preparation of key legal solutions deriving from the strategy. In addition, several other mechanisms for inclusion of civil society in justice sector reforms are envisaged, such as participation in development and implementation of citizen satisfaction surveys and participation in the Council for Justice Sector Reform together with representatives from justice sector institutions.

Montenegro

The European Commission’s 2016 country report points out the basic problem of lack of statistical data in the judiciary, including inconsistency of data. Within Chapter 23, Montenegro has committed to meet the following challenging provisional benchmark, among others: development of “a valid statistical capacity on the basis of Guidelines on Judicial Statistics of the European Commission for the Efficiency of Justice (GOJUST)”.

The evaluation of court performance and results is often inconsistent. The Strategy and the Action Plans for its implementation do not always contain clear distinctions between aims/indicators/results, and sometimes the concepts are repeated (using indicators which are basically the definition of aims and which are not measurable). Also, the action plan implementation reports sometimes lack appropriate sources of verification of the information that the measures have been implemented.

Insufficient level of civil society participation in monitoring and evaluation activities has been noted. Namely, the inclusion of civil society in the reform process and working groups for Chapters 23 and 24 is noted as positive. However, overall the potential benefits of civil society expertise are not yet fully recognised and exploited. The public or expert debates on court performance and results are widely missing.

There is a need to put more emphasis on good practice in court reports and uniformity of the reports, as well as in development of searchable database for court statistics.

The Strategy envisages strengthening of the professional capacity of the High Judicial Council and the State Prosecutorial Council for the analysis of the results of the reform, through hiring experts of suitable profiles, development of data collection system, training of the members of the High Judicial Council and the State Prosecutorial Council in the field of analytics, statistics and strategic planning. With the aim to strengthen data generation and statistics for the work of the justice sector institutions, the Strategy envisages establishing of a department for analytics within the High Judicial Council and State Prosecutorial Council. Furthermore, the Action Plan includes establishing of a working body of the High Judicial Council for analysing the results of work of courts and undertaking of the measures pursuant to the results of work.

One of the strategic objectives of the National Strategy in Serbia is establishment of clear, objective and transparent standards for performance appraisal of judicial office holders (evaluation of work, ethics, discipline, civil liability of judicial office holders). A specific measure is dedicated to developing efficient and transparent instruments for applying standards and analyzing work performance. Furthermore, the Action Plan envisages the establishment of a working body of the High Judicial Council for analysing the results of work of courts and undertaking of the measures pursuant to the results of work.

The Strategy doesn’t include measures aimed at establishing mechanism for civil society participation in monitoring and evaluation activities in the justice sector.

3. Independence and impartiality

This area covers the following sub-areas:

- Management bodies
- Allocation of incoming cases within a court/prosecution office
- Transfer and dismissal of judges
- Procedures in case of threat against the independence of a judge and undue influence

According to the Rule of Law Index\(^49\) report in 2016 concerning impartiality of the criminal justice system, Macedonia’s rate is 0.55 significantly ahead of Serbia’s 0.32, while Montenegro is not included in this ranking. Similar results are noted in the section that measures whether the police, prosecutors, and judges are free from bribery and improper influence from criminal organizations.

(Macedonia 0.55, Serbia 0.38). The results of the two countries are the most similar in the area of independence of the criminal system from government and political influence. Serbia’s score for this criterion is 0.21, slightly behind Macedonia with 0.26.

On the other hand, the Rule of Law Index report reveals that Serbia’s civil justice system, whose result is 0.43, is slightly less corrupt than Macedonia’s system which scored 0.37. Serbia achieved average grade of 0.33 concerning freedom of improper government influence to the civil justice. Similarly, Macedonia scored 0.37 in the same category.

3.1. MANAGEMENT BODIES

_Macedonia_

The key challenges and the current situation regarding the judicial independence may be determined from various domestic and international documents, as well as from the discussions with relevant stakeholders in the sphere. One of the key international analysis in the sphere are the Recommendations of the senior experts’ group on systemic rule of law issues relating to the communications interception revealed in spring 2015. The report was prepared in light of the large number of published illegally intercepted communications, with the aim to provide recommendations for addressing systemic problems which have been revealed or confirmed, especially in the justice sector. The report notes serious allegations about constant interference in the independence of the judiciary, and in particular interference in the work of the Judicil Council. Two years later, the senior experts’ group prepared a second report which indicates that there are still no reforms undertaken for addressing the aforementioned challenges.

_Montenegro_

Further strengthening of independent judicial bodies should also lead to greater independence of the judiciary. In the 2014–2016 Action plan, this strategic direction is divided into two measures: "Strengthening administrative capacity of the Secretariat of the Judicial Council through new employment according to the systematization act" and "Improving administrative support for the work of the Prosecutor’s Office through establishment of the Prosecutor’s Office Secretariat”, which are implemented in continuity, according to the Government’s reports on the implementation of Action Plans for Chapters 23 and 24.

In the recent two years, serious reform efforts have been invested and progress has been achieved with regards to judicial bodies. The function of the President of the Judicial Council has been professionalized. Both secretariats – even with the current capacity – have been strengthened in terms of human capital and technical equipment, so that they can provide the necessary administrative support to the councils.

The Judicial Reform Strategy 2014–2018 also envisages a Strategic Goal “Strengthening the impartiality of justice” which should lead to the improvement of mechanisms for ensuring the impartiality of justice through random allocation of court cases, harmonization of ethical codes with European standards and enabling the responsibility of the judicial office holders for committed criminal offenses.
In order to achieve this strategic goal, the Action Plan for Implementation of the Strategy envisages the following strategic guidelines:

- consistently respect the principle of random allocation of cases;
- strengthen the integrity of judges and prosecutors, including by the declaration of assets;
- change the ethics code of judges and state prosecutors in accordance with international standards;
- develop guidelines for the implementation of the ethical codes and organize systematic education on judicial ethics;
- improve the legal provisions on the functional immunity of judges and state prosecutors.

Random allocation of cases has been introduced in 2013, but is still not implemented in smaller courts, where one judge is either alone or almost exclusively in charge of one type of justice – either criminal or civil. The main reason for such situation is the limited number of judges. In the upcoming period, appropriate plans for monitoring the random allocation of cases will be discussed. In misdemeanor courts, cases are not awarded to judges to work electronically, so random assignments through the judicial information system (PRIS) in those courts is impossible, because these courts are not part of this system.

**Serbia**

According to the Serbian Constitution, 8 out of 11 members of the High Judicial Council and the State Prosecutorial council come from the ranks of judges and prosecutors. This representation is based on merit and professional experience, which is also ensured through the direct election of these 8 members by the judges and prosecutors, upon a nomination process also conducted by judges and prosecutors. Minor impediments to the fair election process are noted, such as not having overall elections, but elections on the level of the courts/prosecution. Thus, there may be discrepancies between the number of votes for election of various judges/prosecutors in the respective Council.

The key strategic goal of the Strategy for justice sector reform in the sphere of independence is securing transparent and independent functioning, in full capacity, of bodies that guarantee independence and autonomy of courts and judges and autonomy of public prosecutors and deputy public prosecutors, namely, the High Judicial Council and the State Prosecutorial Council.

The Strategy points out the need for legally strengthened independence, clearly defined competences and proper capacities of the administrative offices of the High Judicial Council and State Prosecutorial Council. Among other measures, the Action Plan envisages preparation of constitutional amendments for further strengthening of independence, autonomy, professional and administrative capacity of the State Prosecutorial Council and High Judicial Council for the purpose of achieving full independence in accordance with European standards.

The Strategy also recognizes that there is a need for defining more precisely the specific competences of the High Judicial Council and State Prosecutorial Council, especially in terms of

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human resource management and statistical analysis. Furthermore, these two key management bodies in the justice sector should strengthen their transparency. The measures in the Action Plan include: establishing of a minimum deadline for expert debates before key documents are adopted, posting minutes from the sessions on the web-site of the Councils, preparing written explanations on the decisions, regular press releases, and adoption of a Communications Strategy.

Regarding the work of the members of the two management bodies, the Strategy aims to establish a system of accountability. The Action Plan also includes adoption of a Code of Ethics for members of the High Judicial Council. The Strategy recognizes the need for changes in the composition of the High Judicial Council and State Prosecutorial Council aimed at excluding the representatives of the legislative and executive branch from membership in these bodies.

The Action plan envisages participation of the High Judicial Council and State Prosecutorial Council in the preparation of the budget for the justice sector in line with the existing legislation. Furthermore, in order to secure meaningful participation, the Action Plan envisages strengthening of capacities of budget departments and internal auditors in the High Judicial Council and State Prosecutorial Council. According to the Action Plan, these steps should lead towards full transfer of budgetary authority on High Judicial Council and State Prosecutorial Council.

3.2. ALLOCATION OF INCOMING CASES WITHIN A COURT

Macedonia

The Law on Courts and in the Judicial Rules of procedure, stipulate an automated court case management information system (ACCMIS). One of the key functions of the ACCMIS is to perform the allocation of cases to the judges without any subjectivity. However, the practice showed that this system may be exposed to risks for interference, thus hampering the judicial independence and impartiality. The system is administered by an IT officer responsible for maintenance of the ACCMIS database, while the control over the allocation of cases is performed by a working body established by the President of the Supreme Court. Also, the Judicial Council has competence in performing oversight over the functioning of the system.

The expert public has voiced doubts about the objectivity of the allocation of cases, and pointed instances of interference in the process. The report of the Senior Experts’ Group in 2017 points out that the Supreme Court and the Judicial Council have not conducted appropriate oversight and examination of such alleged violations of the ACCMIS. The Ministry of justice conducted a review of the allocation of cases in 2016 and 2017 and found out that 860 cases were excluded from the ACCMIS and weren’t automatically allocated to the judges, thus leaving space for serious systemic violations.
Montenegro

Within the Strategic Goal "Strengthening the impartiality of justice" the Action Plan for Implementation of the Strategy envisages the strategic guideline of consistently respecting the principle of random allocation of cases.

In 2016, changes were introduced to judicial information system (PRIS) to include a feature enabling a party to learn about the judge the case has randomly been assigned to immediately upon submitting the initial document. This is not yet possible in the courts of higher instance. Application of the method of random allocation of cases is also not possible in the misdemeanour courts, so the implementation of the principle of random allocation of cases in these courts need be particularly monitored by a relevant inspection authority.

Serbia

The National strategy envisages the establishment of an efficient system of allocation of cases based on the principle of equalization of the number of cases per judge, as well as on additional criteria taken into consideration in the process of establishing the new court network.

Serbia’s Justice Sector Reforms Strategy envisages changes in the normative framework related to the special character of the right to natural judge in cases of specialization and the possibility of derogation from the automatic case assignment when a programme for resolving case backlog is applied. The proposed measures are aimed at establishing general and objective criteria for case assignment, enabling the allocation of cases to specialized judges/panels and establishing general criteria that take into account the workload of the judge.

3.3. TRANSFER AND DISMISSAL OF JUDGES

Macedonia

The Report of the Senior Experts’ Group from 2015 confirms that there is a widespread perception that the dismissal of judges on higher positions involves political reasons, which was mentioned in the revelations from the intercepted communications between public officials. The experts’ recommendations for improvements in the sphere of dismissal and disciplinary responsibility of judges are still not addressed. There is a high number of dismissed judges in the last years, especially after controversial decisions in high-profile cases, which represents a serious issue and directly impacts the morale and the confidence of the judges in the judicial independence. The 2016 European Commission country report states that Macedonia should in particular reform the discipline and dismissal system for judges, in line with EU and Venice Commission recommendations.

51 Data are recorded manually what hinders possibilities for the Supreme Court to oversee the work of these courts effectively.
52 Dismissal of judges is also covered under the area of Accountability, but in that instance it examines it as a functional instrument of last resort to ensure accountability of judges.
Montenegro

Independence and impartiality of the judiciary has been long seen as a crucial aspect of judicial reforms. Significant legislative and institutional reforms have been conducted in this sphere, resulting in the establishment of the independent judicial bodies (Judicial and Prosecutorial Councils) in 2008, adoption of the constitutional amendments in 2013 and a comprehensive legislation regulating the status and organization of the judiciary in 2015.

Strengthening the independence, impartiality and accountability of the judiciary is also the first and foremost strategic chapters in the 2014–2018 Strategy. It is divided in three strategic sub-goals:

- Strengthening the independence of the judiciary;
- Strengthening the impartiality of the judiciary;
- Strengthening the accountability of the judiciary.

The sub-goal *Strengthening the independence of the judiciary* requires the establishment of “a nation-wide unique, transparent and merit based system of election of judicial office holders, with improved criteria for promotion and a system for periodical professional appraisal”. Within this guideline, five strategic measures are envisaged:

1) Introduction of a unique system of election of judges on the basis of a transparent procedure and merit-based criteria.

2) Introduction of unique criteria for permanent transfer of judges from one court to another on voluntary basis.

3) Introduction of unique nation-wide system of election of state prosecutors based on transparent procedure and merit-based criteria as well as the improvement of unique criteria for better voluntarily mobility of state prosecutors.

In line with the Law on Judicial Council and judges, the implementation of the reform of the appointment of judges under the newly established uniform system of selection of candidates for judges, began in October 2016.

Under the Law on Judicial Council and Judges, the Judicial Council instructs and transfers judges from one court to another court in the following ways: with the consent of the judge, for a period of up to one year, when the judge is refered to another court of the same or lower grade; with the consent of the judge, permanent deployment to the court of the same or lower grade on the basis of an internal advertisement and without the consent of a judge.

With regards to the voluntary transfer of judges, it can be stated that reasonable criteria for permanent appointment of judges from one court to another have been introduced with the 2015 legislation.

Serbia

The transfer of judges is a mechanism defined in the Law on Judges as a possibility to transfer a judge, with their consent, to a court on the same level, due to a need to urgently fill vacancies, that

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53 Article 19.
can’t be filled in another way. For such an action, consent from both presidents of the courts is needed. During 2016, the High Judicial Council made 14 decisions based on this article.

Serbia’s Justice Sector Reform Strategy points out the need for respect of the principle that a judge can be transferred only in the court of the same rank which is overtaking competences from an abolished court. The Action Plan includes introduction of a system of permanent horizontal transfer and relocation of judges (on a voluntary basis, in accordance with the constitution and with adequate stimulation) with particular regard to the reintegration of judges who returned to office after the decision of the Constitutional Court of Serbia in 2012.

4. Accountability

This area covers the following sub-areas:

- Disciplinary procedures and dismissal of judges and public prosecutors
- Code of ethics for judges/public prosecutors

4.1. DISCIPLINARY PROCEDURES AND DISMISSAL OF JUDGES AND PUBLIC PROSECUTORS

Macedonia

The current system for disciplinary responsibility has obvious deficiencies and is not aligned with the standards for accountability, independence and impartiality. The Judicial Council should revise its disciplinary proceedings, taking into account the directions of the European Court of Human Rights. Furthermore, the recommendations provided by the Venice Committee on the disciplinary proceedings should be incorporated in the Justice Sector reform strategy. Among other things, this includes creating a possibility for submitting a complaint to the court against the disciplinary grounds and limiting the disciplinary responsibility to cases of inappropriate behavior of judges and serious negligence, without taking into account the essence of their decision. The ethical and disciplinary rules should be clearly defined in the law and in practice.

Montenegro

The accountability of judges and prosecutors in Montenegro is still not fully guaranteed because: a) the new system of individual professional evaluation is still in the pilot phase; b) the disciplinary system does not allow sanctioning the relevant ethical misconduct; and c) initial track record of

\[\text{Compare: Informer on the work of the HJC, 2016,}\]
\[\text{https://vss.sud.rs/sites/default/files/attachments/ГОДИШЊИ%20ИЗВЕШТАЈ%20О%20РАДУ%20ОСАВЕТА%20ОСУДАВА.pdf}\]

\[\text{Dismissal of judges is also covered under the area of Independence, but in that instance it examines only whether there is room for political or other interference in such procedures.}\]
regular inspections of the work of judges and prosecutors is required. The above-mentioned inspection service of the Ministry of Justice should be given the power to investigate the disciplinary offences committed by judges and prosecutors.

Although the Constitution was amended in 2013, and the new laws laid down the conditions for conducting disciplinary proceedings against judges and state prosecutors as well as strengthened the procedure for removing judges and prosecutors’ functional immunity, not a single state prosecutor was dismissed or disciplined throughout 2015 and 2016. In 2015, three judges received a formal warning on the basis of the previous law, while in 2016 there were no disciplinary measures imposed against judges.56

The biggest problem with disciplinary offenses is the fact that these offenses for both the judges and state prosecutors are vague and that they do not differ from violations of the codes of ethics. This creates legal uncertainty and does not contribute to strengthening the accountability in the judiciary. Moreover, breach of ethics does not require a sanction, but affects, only indirectly, the promotion and dismissal of judges and state prosecutors.

Definitions of nine disciplinary offenses for judges match 21 provisions of the Code of Judicial Ethics, while the definitions of seven disciplinary offenses for prosecutors match nine provisions of the Code of Prosecutorial Ethics. In a situation where disciplinary and ethical obligations of judges are not clearly distinguished, this creates additional room for avoiding disciplinary action and favours the tendency to opt for the punishment of the violation of ethics, which does not imply a sanction, rather than to start disciplinary proceeding against a judge or a prosecutor.

The main strategic guideline envisaged with the Justice Sector Reform Strategy in the field of judicial accountability is to strengthen the integrity of judges and prosecutors, through the implementation of the following measures in the 2014–2016 Action Plan:

- Adopt integrity plans, in accordance with the guidelines off the Ministry of Justice, in courts and state prosecution offices;
- Consistent Application of Ethical Codes;
- Declaration of assets by judges and state prosecutors.

The Strategy also contains a number of measures in this field, including:

- Reasons for disciplinary responsibility of judges and state prosecutors should be made sufficiently objective, and actions to reasons for disciplinary responsibility should be clearly prescribed by law to prevent discretionary decision-making in disciplinary proceedings;
- Distinguish between mild, severe and most severe grounds for disciplinary responsibility and improve the system of sanctions that may be imposed in disciplinary proceedings to correspond to the principle of proportionality;
- Revise the dual role of the Disciplinary Commission, which should not be able to both initiate and conduct the proceedings;
- Clearly specify the grounds for dismissal of state prosecutors;

56Dismissed by the Disciplinary Committee of the Judicial Council on thegrounds that it was “submitted for an action that is not prescribed as a disciplinary offense”, with no further explanation.
• Conduct procedures for establishing accountability of judges and state prosecutors in accordance with the law and include information thereof in the annual reports on the work of the Judicial and Prosecutorial Councils;

• Continuously monitor objectivity and transparency of procedures for establishing accountability of judges and state prosecutors.$^{57}$

**Serbia**

Disciplinary procedures are conducted on two levels: the first one is a Disciplinary Prosecutor initiating a case before the disciplinary commission of the court, while in the second instance the High Judicial Council decides as an appellate forum. During 2016, the Council decided in 12 disciplinary cases, based on appeals of the Disciplinary Prosecutor or judges. Disciplinary procedures were conducted due to the following reasons:

- Unjustified long time for enactment of written verdicts
- Unjustified long time for conducting court proceedings
- Unjustified long time for conducting court proceedings and inadequate conduct towards the court staff or sides in the court proceedings.

Out of 12 cases in the second instance, the High Judicial Council decided in 7 cases that the appeal by the judge was founded. In 3 cases, the Council adopted the appeal by the judge, lowering the sanction to a 30% reduction in the salary.

As a preventive measure, the Strategy envisages normative strengthening of disciplinary accountability of judges, public prosecutors and deputy public prosecutors.

The Action Plan points out that the normative provisions related to conflict of interest should be improved in accordance with international and European standards, and consistent implementation of legislation in this sphere should be secured. The decision on the compatibility of other forms of engagement of judges with their judicial position is also within the competency of the High Judicial Council. During 2016, the Council decided on 7 requests by judges. In only one case, it found that there is no breach of the compatibility norms.

Ending the judges’ tenure is another prerogative of the High Judicial Council. During 2016, the Council made 95 decisions to end a judges tenure – in 58 instances due to fulfilling the retirement requirements, in 28 due to a personal request, in 5 cases due to permanent loss of working capacity, and in 4 cases the Council reached a decision to dismiss judges.

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$^{57}$ This measure was somehow omitted from the Action Plan 2014–2018.
4.2. CODE OF ETHICS FOR JUDGES/PUBLIC PROSECUTORS

**Macedonia**

According to the 2016 European Commission Report on Macedonia, the codes of ethics for judges and prosecutors are in place but there is little evidence of effective monitoring of compliance. The Code of Judicial Ethics emphasizes the principles and determines, in details, the guidelines for ethical work of judges. However, the Code does not regulate in details the behaviour of the presidents of the courts in relation to their colleagues. The Commission for the Code of Ethics is tasked with monitoring of the Code’s implementation. However, some of the decisions by the Commission were insufficiently reasoned, which additionally indicates a necessity to regulate the Commission’s liability to provide better argumentation of its decisions, in order to create a practice for valid interpretation of the Code’s provisions.

**Montenegro**

The Action Plan of the Judicial Reform Strategy 2014–2018, within the Strategic Goal "Strengthening the impartiality of justice", envisages the following strategic guidelines:

- change the ethics code of judges and state prosecutors in accordance with international standards.
- develop guidelines for the implementation of the ethical codes and organize systematic education on judicial ethics.

Montenegro is developing the practice of interpretation of the provisions of the Code of Ethics in the judiciary and is raising awareness among judges and prosecutors, as well as among common citizens. In this regard, the Action Plan for implementation of the Strategy contains two strategic guidelines:

- Amend the Codes of Ethics for judges and state prosecutors;
- The Code of Ethics should be accompanied by guidelines and systematic trainings.

The Codes of Ethics for judges and state prosecutors were revised during 2014 and 2015, to align with international standards. The commissions for monitoring their implementation were established in 2014. Information about the existence of ethical rules for judges and prosecutors and about the committees to monitor their implementation were published on the websites of courts and the prosecution, as well as in the reports on the work of these commissions. Brochures on the Code of Ethics of Judges and Prosecutors Code of Ethics were distributed with a daily newspaper, to inform citizens about judicial ethics. The website “Courts of Montenegro” does not contain information for citizens to whom they can report a judge who violates the Code, unlike the website of the Supreme State Prosecutor’s Office which contains such instructions in relation to the state prosecutors.\(^{58}\)

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\(^{58}\)According to reports on the implementation of Action Plan for Chapter 23, and the research conducted by the Association of Judges and NGO Civic Alliance, within the AP 23, the majority of citizens have not heard about the codes or is not sure that they exist, and only 16% was familiar with the commissions that monitor their implementation.
Since 2016, the Commission on the Code of Judicial Ethics decided on a total of 47 initiatives for establishing a violation of the Code, out of which a violation of the Code was found in only 10.6%, while in 68% (32) cases no violations were found. It has been noticed that the Commission was prone to establish the violation of the Code, without using its power to initiate a disciplinary procedure against a judge who violated the Code, and without providing any explanation as to why no disciplinary procedure was initiated.

The Commission for monitoring the Code of Ethics for Prosecutors decided upon four cases and the violations of the Code were established in two of them. In December 2016, the Commission carried out an Analysis of the Respect for the Ethical Code of State Prosecutors with special reference to respect for the rules of conflict of interest, in which it was concluded that there were no applications filed for non-disclosure by the state prosecutors.

Serbia

As one of the key strategic goals for securing impartiality and quality of justice, the National Strategy for justice sector reform includes the adherence to standards of professional ethics and integrity. A separate measure in the Action Plan is dedicated to preparation of codes of ethics in accordance with international and European standards and their full implementation. The Action Plan also envisages development of an action plan for improving the integrity and ethical conduct of judges and public prosecutors, amendments to the Code of Ethics of Judges and adopting of a Code of Ethics for Public Prosecutors and Deputy Public Prosecutors.

RECOMMENDATIONS

COORDINATION AND IMPLEMENTATION OF THE JUSTICE SECTOR REFORMS

- The justice sector reform strategies should make a clear distinction between strategic aims, results and indicators. By investing more time and effort in defining adequate indicators, the activities will be founded on solid background, which will provide a solid basis for proper monitoring of implementation results.
- The action plans for the implementation of the judicial reform strategies should be developed in close collaboration with all relevant stakeholders, and supplemented with proper regulatory impact assessment of the proposed measures.
- The reform action plans should define more specific timeframes for implementation of the activities, even if a large segment of the actions are on-going, or they require continuous control by the institutions. When appropriate, it may be favourable to introduce time indicators which relate to, for example, the last date for adoption of a relevant document.
- More means and attention should be invested in qualitative and thorough analysis of the reform outcomes.
- In order to enable easy verification of the claims made in the reports on the implementation of the justice sector reform strategies, they should provide hyperlinks to documents that verify the achievements (e.g. a link to a legislative act, if the measure refers to adoption of new legislation).
- Justice sector stakeholders need to ensure comprehensive, inclusive and meaningful consultations of civil society and other non-state actors. The results should be published in a form suitable for the public and discussed with key stakeholders. Regular public and expert debates on the content of the draft annual and semi-annual reports on the implementation of the judicial reform strategies should be organized in order to more objectively take stock of the results and agree corrective measures where needed.

EFFICIENCY

- Periodic reviews of the organization of the judiciary, i.e., of the local and actual jurisdiction of various courts on the basis of their workload should be prepared in order to ensure even workload distribution between courts on national level, and not just at the level of individual courts.
- The enforcement of court decisions should be strengthened by prioritizing the elimination of serious backlog of cases, mainly created by cases which are prolonged for an unreasonable time.
- The execution of judgments and decisions by the European Court of Human Rights should be strengthened.
QUALITY OF JUSTICE, INCLUDING PROFESSIONALISM AND COMPETENCE

- The justice sectors should increase their transparency through provision of practical online information for the general public (e.g. about starting a proceeding, legal aid, costs of proceedings, information about individual courts).
- Physical barriers for persons with disability should be eliminated in justice sector institutions in order to contribute to accessibility of justice.
- The Courts should publish their judgments and decisions online in a timely manner and in an easily searchable format.
- The alternative dispute resolution mechanisms (judicial or non-judicial mediation, arbitration, conciliation) should be adequately promoted and their use should be incentivized.
- The evaluation system for judges should be predominantly based on qualitative criteria in combination with quantitative criteria.
- The initial and in-service training of judges and public prosecutors should include enhanced segments on EU law, application of EU law, court management functions, judicial ethics and public communication.
- Specific training programmes should be developed for enhancing the skills and expertise of the court administrative staff.
- Measures should be undertaken to achieve greater uniformity of court practice, including creation of a searchable (online) central database of court decisions, establishment of a specialized units dealing with analysis in the field of uniformity of court practice and regular meetings between courts of same instances on the matter.
- The preparation of the budget for the justice sector should be based on a sound methodology that takes into account the needs of the court/prosecutorial system, the workload and the set goals/performance targets.
- Methodologies for determining the number of judges, public prosecutors and support staff should be introduced or improved in order to take into account the workload and set goals/performance targets.
- Quality standards should be developed, addressing the conduct of judicial proceedings, duration of proceedings, drafting and elaboration of judgements, publication of judgements, clarity/reasoning of judgements, IT interconnection, court workload, management of cases and backlogs, informing parties, allocation of human and material resources and gender diversity.
- The evaluation of court performance and results by using relevant indicators and targets should be performed consistently, and should feature regular public or expert debates.
- Detailed and accurate statistics should be continuously kept. The statistical system should provide full compatibility of data from all justice sector institutions, as well with the European systems, such as the Justice Scoreboard and GOJUST.
INDEPENDENCE AND IMPARTIALITY

- The appointment of members of the judicial council or public prosecutorial council should be exclusively based on merit and professional experience.
- The justice sector management bodies (Judicial Councils and Public Prosecutorial Councils) should receive adequate resources in order to act independently. The court system should have direct participation in decision-making regarding the budget for law courts. Judicial/prosecutorial councils should lead the decision-making process regarding the justice sector budget and manage the court and prosecution budgets.
- The work of the management bodies should be transparent and open for the public, and information on their work and decisions should be published in a timely manner.
- The process of allocation of cases shall be supervised by the highest justice sector institutions and external actors (academia, civil society, media).
- The room for political interference shall be minimalized and the security of judges’ tenure shall be provided by limiting opportunities for submitting or influencing proposals on dismissal of judges by the executive branch of power.

ACCOUNTABILITY

- The potential conduct which may lead to removal from office or disciplinary sanctions should be clearly defined and strict procedures for dismissals and disciplinary sanctions should be set or reinforced.
- The decision of disciplinary bodies should be subject to an appeal or review before a Court/Constitutional Court or other independent body.
- Strict sanctions shall be imposed for a judge who does not withdraw from adjudicating a case in which their impartiality is in question or where there is a reasonable perception of bias.
- The codes of ethics for judges or public prosecutors should be developed/improved and the compliance with the code should be effectively monitored. Relevant laws and by-laws shall be amended in order to ensure that gross violations of the Code of ethics are taken into account when deciding on the promotion of judges and prosecutors and assessed in accordance with their severity.
Macedonia, Montenegro and Serbia are facing serious justice sector reforms as part of their efforts to accede to the European Union. Montenegro and Serbia have already begun negotiations under the chapter 23 – Judiciary and fundamental rights and have developed respective action plans. Largely following these plans, both Montenegro and Serbia have adopted Justice Sector reform strategies covering the periods 2014–2018 and 2013–2018 respectively. Macedonia is in the process of developing a Justice Sector Reform Strategy covering the period up to 2022, but the EU is making the start of its negotiations conditional to a list of urgent reform priorities, which also refer to: de-politicizing the appointment and promotion of judges and prosecutors, establishing an adequate performance management system as a basis for career decisions, revising the disciplinary action system to remove risks to judicial independence, ensuring the professionalism of the Judicial council and stimulating its role to protect judicial independence.

This paper presents a regional comparative analysis of the justice sector reform measures in the three countries, along with concrete recommendations for further steps in the reform processes, and positive examples that could be shared and replicated across the countries.